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Governor

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Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

m/057/0006

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June 25, 2009

CERTIFIED RETURN RECEIPT
7004 2510 0004 1824 9764

Mr. Bill Howell
CE Butters Realty and Construction
760 North Hwy 89
Harrisville, Utah 84404

Subject: In the Matter of Informal Conference, Findings, Conclusions and Order for the Towers Sand and Gravel Mine, Cessation Order MC-2009-17-03, M/057/0006, Weber County, Utah

Dear Mr. Howell:

On June 25, 2009, the Division of Oil, Gas and Mining (Division) held an Informal Conference at the Division's offices in Salt Lake City, Utah. The following individuals attended: John R. Baza, Division Director, served as the Conference Officer. Dana Dean, Associate Director, Kevin Bolander, Assistant Attorney General, and Paul Baker, Minerals Program Manager, attended on behalf of the Division. Kent Butters and Kevin Butters represented CE Butters.

The Findings and Conclusions and Order in this matter are based on information provided by the Division and Messrs. Butters in connection with this Informal Conference.

FINDING OF FACTS

1. On November 29, 2006, the operator requested that the site be released from its small mine bond and plan on the basis that it is a sand and gravel operation.
2. After a January 10, 2007 inspection where it was noted that the Towers Sand and Gravel Mine was indeed mining in bedrock, and in a small clay pit, the Division denied the request by a letter dated January 17, 2007. The letter said the operation may have exceeded the five-acre limit for a small mine and required that the operator submit information identifying the full extent of the mining operation within 60 days. Subsequently a Notice of Intention to Commence Small Mining Operations was submitted and approved together with a surety in the amount of \$18,600.00 for a five-acre operation. This approval was sent March 15, 2007.
3. Mr. Baker inspected the mine again in April 2008, and based on his observations, and the Division's GIS Specialist's (Dan Smith) calculations the mined area was greater than 5 acres.
4. On April 17, 2008 the Division notified CE Butters that a Notice of Intent (NOI) to commence large mining operations (LMO) was required by June 16, 2008.



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5. CE Butters submitted the requested NOI and required fee on June 16, 2008.
6. On September 30, 2008, the Division responded to the NOI with questions regarding the NOI, and requested a total interim bond of \$197,400 based on average per-acre costs. Both a response to the Division's questions, and the interim bond were required to be submitted by December 1, 2008.
7. Further (undocumented in Division files) communication occurred between the Division and CE Butters.
 - When it appeared that CE Butters was diligently working toward a bond, but just had not had enough time, the Division did not enforce the December 1, 2008 deadline.
 - At one point CE Butters was pursuing a collateral bond, which is allowed as per Utah Code Title 40 (40-8-14.2(e)(i)). There was some confusion on both sides (CE Butters wishing to use the mined land in question as a collateral bond, the Division unaware that the provision to post a collateral bond's absence from the R647 Rules did not preclude its use) that caused significant delay in the bonding efforts.
 - Mr. Lynn Kunzler, current assigned inspector for the mine gave a new deadline for the surety as June 1, 2009.
8. CE Butters had been working with Stratford Insurance Group (SIG) to secure a surety bond. CE Butters has dealt exclusively with performance bonds and bid bonds in the past, no long-term bonding such as the Mining Act requires.
9. Mr. Val Stratford of SIG was finally referred to Viking Bond Service on May 20, 2009. As of Friday, June 5, 2009 the last date he had been able to contact Viking, they were sure they would be approving the bond, but needed further review.
10. Cessation Order MC-2009-17-03 was issued June 9, 2009 for 'conducting mining operations without appropriate approvals and adequate surety' and required all mining to cease.
11. In a phone call received June 9, 2009, Mr. Kevin Butters of CE Butters requested a Stop Work Conference.
12. A Stop Work Conference was scheduled and held June 10, 2009 at 7:00 am, in accordance with R647-6-102.4.
13. The Stop Work Conference affirmed the Cessation Order, but allowed for:
 - Previously stockpiled material to be transported from the mine and sold from 8:00 am on June 10, 2009 to 11:59 pm on June 17, 2009.
 - *Exposed* boulders to be removed from the mine and sold from 8:00 am on June 11, 2009 to 11:59 pm on June 17, 2009. No overburden was to be removed to expose boulders.

- No further mining activities, except as described above, shall be allowed until an interim bond of \$197,400 (total) is posted with the Division.
 - The cessation order will be lifted upon receipt of the interim bond of \$197,400 (total)
 - A comprehensive response to the Division's September 15, 2008 review will no longer be a condition for abatement of this CO, but must be provided by July 6, 2009 to avoid further enforcement action.
14. Mr. Kent Butters indicated that there was at least one week's worth of stockpiled, saleable material at the mine as of June 10, 2009.
 15. Dana Dean heard from Mr. Tom Buckner of Viking Bond Service on June 11, 2009. He indicated that they would be approving the bond offer, with terms. He anticipated that final terms would be presented to CE Butters on June 11, 2009 and that the finalization process after that would be quite short, if CE Butters responds quickly.
 16. On June 11, 2009 Mr. Kevin Butters asked for more information from the Division regarding collateral bonding.
 17. Mr. Kevin Butters informed the Division on June 15, 2009 that Viking Bond Service had presented them final terms, but they were impractical for the Towers Sand and Gravel operation's needs, and that they would definitely pursue a collateral bond.
 18. On June 16, 2009 Mr. Kevin Butters provided the Division with an appraisal for the property he planned to use as collateral. The property included the area to be mined and bonded, and the Division rejected it on that basis.
 19. On June 16, 2009 Mr. Kevin Butters requested by telephone an informal conference to appeal the Cessation Order identified above to the Division Director. A time for an informal conference could not be arranged until June 25, 2009.
 20. Due to the delay in setting a date for the Informal Conference and to alleviate hardships that may result, the Cessation Order was modified to allow the resumption of operations until June 25, 2009 at 5:00 p.m. at which time the Cessation Order as affirmed by the June 11, 2009 Findings, Conclusions and Order would be reinstated without modification except as it may be modified as a result of the informal conference.
 21. Messrs. Butters provided the Division an appraisal, a title opinion, and a Trust Deed for a property not to be disturbed by mining. The Trust Deed has not been filed pending legal review by Division Counsel.

CONCLUSIONS OF LAW

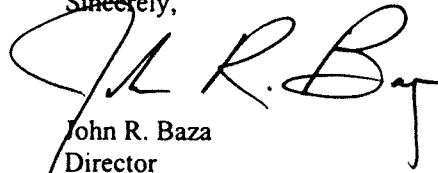
1. Utah Administrative Rule R647-6-102.1.17 states the Division may modify, terminate, or vacate a cessation order for good cause.

2. There is good cause to vacate the Cessation Order because of the Division's mutual causation of the delay in bonding and the prompt efforts by CE Buttars to obtain a collateral bond during the past two weeks.
3. The Cessation Order has prohibited CE Buttars from fully operating at its facility and site for several weeks. The Conference Officer concludes that this serves as a sufficient penalty in this matter, and additional civil penalties are not warranted.

ORDER

- Cessation Order MC-2009-17-03, issued June 9, 2009, is hereby vacated, with the condition that the Division and its counsel review and approve the Trust Deed. It shall be legally accurate and able to be filed in a timely manner.
- A comprehensive response to the Division's September 15, 2008 review must be provided by July 6, 2009 to avoid further enforcement action.
- If CE Butters fails to meet any of the above conditions, then the Cessation Order will remain in effect, and this Order will be void.

Sincerely,



John R. Baza
Director

JRB;DD:vs

cc: Dana Dean, DOGM
Paul Baker, DOGM
Lynn Kunzler, DOGM
Kevin Bolander, AG
Steve Alder, AG

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